
In the Matter of

Donald Ranft,
Complainant

v.

Pennsylvania Power & Light,
Respondent

Date Issued: August 30, 1999

Case No.: 1999-ERA-2
1999-ERA-23

RECOMMENDED DECISION AND ORDER
APPROVING SETTLEMENT AGREEMENT
AND DISMISSING COMPLAINTS WITH PREJUDICE

This is a proceeding arising under the Energy Reorganization Act, 42 U.S.C. 5851, and its implementing regulations found at 20 C.F.R. Part 24. I have received a Joint Motion for Approval of the Settlement Agreement, Dismissal With Prejudice, and Confidential Treatment of the Settlement Agreement, which has been signed by all parties of record.

The Part 24 regulations do not contain any provision relating to a dismissal of a complaint by voluntary settlement. Therefore, it is necessary to refer to the Rules of Practice and Procedure for Administrative Hearings before the Office of Administrative Law Judges, 29 C.F.R. Part 18, which Rules are controlling in the absence of a specific provision at part 24.

Part 18.9 allows the parties in a proceeding before an administrative law judge to reach agreement on their own. 29 C.F.R. Part 18.9(a)-(c). Once agreement has been reached by the parties, the regulation permits the parties to “[n]otify the administrative law judge that the parties have reached a full settlement and have agreed to dismissal of the action.” 29 C.F.R. Part 18.9(c)(2). Once such notification occurs, the administrative law judge shall then issue a decision within thirty (30) days if satisfied with the agreement’s form and substance. 29 C.F.R. Part 18.9(d).

The Judge must review the Settlement Agreement to determine whether its terms are a fair, adequate and reasonable settlement of the complaint. *Bonanno v. Stone & Webster Engineering Corp.*, 97 ERA 33 (ARB 6-27-97).

Upon careful review, this Judge has reached the determination that the Settlement

Agreement fully comports with precedent established by the Secretary and/or Administrative Review Board.

Paragraph V of the Settlement Agreement provides that the parties shall keep the terms of the settlement confidential, with some delineated exceptions. I note, however, that the parties have attempted to bring this confidentiality provision into compliance with applicable case law by specifically providing that the confidentiality provision does not restrict disclosure where required by law.

I note that the parties have designated the Settlement Agreement as confidential commercial information, as defined at 29 C.F.R. Part 70.26, and thereby attempt to preclude disclosure pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. 552.

FOIA, however, requires agencies to disclose requested documents unless they are exempt from disclosure. *See Bonanno, supra*, at p. 2; *Klock v. Tennessee Valley Auth.*, 95 ERA 20 (ARB 5-30-96), at p. 2; *Darr v. Precise Hard Chrome*, 95 CAA 6 (Sec'y 5-9-95), at p. 2; *Webb v. Consolidated Edison Co.*, 93 CAA 5 (Sec'y 11-3-93), at p. 2. Since no FOIA request has been made, "it would be premature to determine whether any of the exemptions in FOIA would be applicable and whether the Department of Labor would exercise its authority to claim such an exemption and withhold the requested information. It would also be inappropriate to decide such questions in this proceeding." *Darr, supra*, at pp. 2-3. *See also, Debose v. Carolina Power and Light Co.*, 92 ERA 14 (Sec'y 2-7-94), at p. 3. Nevertheless, the Settlement Agreement shall be placed in a portion of the file clearly designated as confidential commercial information which must be handled in accordance with the appropriate procedure for a FOIA request, which procedure is found at 29 C.F.R. Part 70.26. *See generally, Bonanno, supra*, at n.1.

Accordingly, it is hereby RECOMMENDED that the Settlement Agreement between Complainant Donald Ranft and Respondent Pennsylvania Power And Light Company ("PP & L"), be APPROVED and that the matters be DISMISSED WITH PREJUDICE. It is FURTHER RECOMMENDED that the Settlement Agreement be designated as confidential commercial information to be handled in accordance with 29 C.F.R. Part 70.26.

LINDA S. CHAPMAN
Administrative Law Judge

NOTICE: This Recommended Decision and Order will automatically become the final order of the Secretary unless, pursuant to 29 C.F.R. 24.8, a petition for review is timely filed with the Administrative Review Board, U.S. Department of Labor, Frances Perkins Building, Room S-4309, 200 Constitution Avenue N.W., Washington, D.C. 20210. Such a petition for review must be received by the Administrative Review Board within ten business days of the date of this Recommended Decision and Order, and shall be served on all parties and on the Chief Administrative Law Judge. *See* 29 C.F.R. 24.8 and 24.9, as amended by 63 Fed.Reg. 6614 (1998)